



Servicemembers Civil Relief Act



The “Servicemembers Civil Relief Act” (SCRA) provides legal protections for active duty Soldiers, individuals entering the military, individuals called to active duty, and deployed servicemembers. The protections are wide-ranging and sometimes complicated, so you should talk to an attorney if you think you need to invoke them. But in the meantime, here are five of the major protections:

1. Six Percent Interest Rate Cap

If you have debts from before you entered active duty and your service has materially affected your ability to repay those debts, you might be entitled to have your creditors lower the interest rate to six percent (6%) for the remainder of your active duty tour. The SCRA also states that creditors must forgive any interest charged over 6%, and refund the additional interest paid since entering on active duty. This 6% cap applies to your individual debt as well as any debt held jointly, but it does not apply to federal education loans. To take advantage of this law, contact the creditor in writing and attach a copy of your orders. (A sample letter to send creditors is attached).

2. Stay of Legal Proceedings

Under the SCRA, if you are a named party (plaintiff or defendant) to a non-criminal court case, you may request a stay (postponement) of the case. The law requires that the court grant at least a 90-day stay upon the request of a servicemember. Additional stays may be granted at the discretion of the judge or hearing official, but if the judge denies the additional stay, he must appoint counsel to represent you in your absence. To take advantage of this protection, you’ll need to send two letters to the court explaining why you can’t attend, one from you and one from your commander. A legal assistance attorney can help you draft these.

3. Protection Against Default Judgments

Servicemembers are also protected in two ways from having unexpected default judgments entered against them. Under the first, anytime a defendant misses a court date, the plaintiff – the person suing the servicemember – must swear to the court whether the defendant is in the military, and if he is and he has not yet been involved in the case, then the court must appoint an attorney to represent the servicemember (but the representation will likely be limited to finding the servicemember and pursuing a stay on his behalf). The second protection allows a servicemember to “reopen” a default judgment against him – reargue the case, essentially – if he never appeared in the case (e.g. he never filed anything with the court), if his military service materially affected his ability to defend himself, and if he has a good legal argument.

4. Lease and Contract Terminations

Active duty servicemembers also have the right under certain circumstances to terminate or suspend a few kinds of leases and contracts, among them real property (home and apartment) leases, automobile leases, and cell phone contracts. To terminate a home or apartment lease, you must have been ordered to PCS or deploy for at least ninety days, and you must provide your orders at least thirty days before the move. To terminate an automobile lease, you must be ordered to PCS OCONUS or deploy for more than 180 days. To suspend a cell phone contract, you must be ordered to PCS or deploy to an area where your ability to receive cell phone service is materially impacted.

5. Eviction

The SCRA also prevents landlords from evicting servicemembers or their family members from premises without a court order. To qualify for protection, the premises must be used primarily as a residence and where the monthly rent is less than \$2,400. This rent ceiling is subject to increase due to inflation.

Copy of SCRA Letter (6% Interest Rates)

-Use your own letter head-

Date

To: *[insert creditor's complete address]*

RE: My account number *[insert your account number]*

Dear *[insert complete name of creditor]*:

This letter is to advise you that I have been ordered to active duty service with the United States Army. As a result of my military service, I have lost my civilian employment income. I incurred the above referenced debt prior to entry on active duty. My entry into military service has substantially affected my ability to make the payments that I agreed to make while a civilian.

I entered active duty on _____ (date), and am presently on active duty assigned to _____ (unit). The Servicemembers' Civil Relief Act of 2003 (50 U.S.C. App. § 527), sets a six percent (6%) per annum ceiling on interest charges (including service charges, renewal charges and fees) during the period of a service member's military service for obligations made prior to the date of entry onto active duty when the active duty materially affects the ability to pay.

Since entering active duty, I have experienced a decrease in salary, adversely affecting my ability to pay. Thus, I am requesting an adjustment of this account to reflect the statutory six percent (6%) rate. This rate became effective upon my entry to active duty on _____ (date). Please ensure that your records reflect this statutory ceiling and that any excess charge is withdrawn. The interest over 6% must be forgiven, not just deferred and my monthly payments must be reduced by the reduction in the interest rate.

Please contact me at _____ (phone or address) with a revised payment schedule.

I have enclosed a copy of my active duty orders for your reference, and will notify you as soon as my active duty ends.

Thank you for your understanding and support in this matter.

Sincerely,

Sign your complete name
Telephone number and address

Enclosure order

	Camp Casey Legal Maude Hall Rm. 235, 730-3660	
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